

Oregon State Bar

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2020

**Third Annual  
Disciplinary  
Board Report**

March 2021

Mark A. Turner  
Adjudicator

## **I. INTRODUCTION**

This is the third Annual Report of the Disciplinary Board, covering the year 2020. The report provides an overview and statistics of filings with the Disciplinary Board Clerk and Disciplinary Board appointments. The Report also provides an overview of the adjudicatory process, including an analysis of the dispositions overseen by the Adjudicator, with discussion of any significant developments over the last year.

## **II. CHANGES TO BAR RULES OF PROCEDURE**

On January 9, 2020, the Supreme Court adopted an amendment to the Bar Rules of Procedure 2.4(a) to increase the number of Disciplinary Board members in Region 4, based on increased population.

The Court amended the Oregon State Bar Rules for Admission and Rules of Procedure during COVID-19 Outbreak in March 2020. These amendments restricted in-person complaints, allowed for electronic filing procedures and service by email, and declarations replacing affidavits. This order also allows for the Adjudicator to order remote participation in disciplinary proceedings to comply with local, state, or national public health orders or recommendations and to grant continuances of hearings in excess of 56 days for good cause.

In October 2020, the Court adopted amendments to Bar Rules of Procedure 8.1, 8.2 and 8.14 with regard to requirements for reinstatements and active pro bono transfers.

## **III. DISCIPLINARY BOARD CLERK OVERVIEW AND STATISTICS OF FILINGS**

In 2020, the OSB Disciplinary Counsel's Office (DCO) filed 15 formal complaints with the Disciplinary Board Clerk pursuant to BR 4.1; this was 25 fewer than in 2019. Of the 2020 complaints filed, four formal complaints were filed involving lawyers in Region 5; three formal complaints were filed involving lawyers in Region 4; one formal complaint

was filed involving lawyers from Region 7; one formal complaint was filed involving lawyers Region 6; four formal complaints were filed involving lawyers from Region 1; one formal complaint was filed involving lawyers from Region 3, and one formal complaint was filed involving lawyers from Region 1.

Much of the reduction in cases handled during 2020 arose from staffing issues in DCO as explained in Disciplinary Counsel's Annual Report for 2020 at page 11.

The COVID-19 pandemic also appeared to slow the filing and processing of cases. The majority of Bar staff has worked from home since March 17, 2020, including the Adjudicator and the Disciplinary Board Clerk.

The Adjudicator entered default orders in two cases pursuant to BR 5.8 for failure to appear and defend (after a formal complaint was filed). In another case, the Adjudicator entered an order striking respondent's answer as a discovery sanction for failure to comply with discovery obligations. Trial panel opinions were issued in each of these cases.

In 2020, DCO filed one BR 3.1 petition for interlocutory suspension during pendency of disciplinary proceedings with the Disciplinary Board Clerk. The Adjudicator signed an order approving stipulation for this BR 3.1 suspension.

DCO filed two BR 3.5 petitions in 2020 seeking reciprocal discipline. The respondent filed a Form B Resignation prior to any disposition in one case. A stipulation resolved the other BR 3.5 petition.

There were 11 petitions for suspension for failure to respond to disciplinary counsel/subpoenas pursuant to BR 7.1. The Adjudicator signed four orders of administrative suspension. Six of the petitions were withdrawn because respondents complied with their obligations.

The Adjudicator received and approved 19 stipulations for discipline. Of these, 10 cases had been set for trial. DCO dismissed two formal complaints before trial.

The Adjudicator issued eight written opinions in 2020. Five were the result of trials. Of these five hearings, four were held remotely and one was in person. Two opinions were issued in cases where respondents were found in default for failure to appear, and one was issued in a case where the respondent was found in default for failure to obey an order compelling discovery.

Remote trials are currently held using the Zoom Pro service. The trials have run efficiently, with no denial of due process to the parties caused by the use of video conference. No party has made an objection to the conduct of a remote hearing during the hearing or after its conclusion. The Adjudicator has issued a standard order regarding Zoom protocols in all cases which provides, among other things, that:

“If the Adjudicator conducting a remote proceeding determines at any time that the audio or video connection is so poor as to interfere with the fair administration of justice, the hearing shall be postponed until such time as a better connection can be obtained or the matter can be set for an in-person proceeding. However, it shall be the responsibility of a party or counsel for a party to promptly inform the Adjudicator if there has been a disruption at their end of the communication that substantially interferes with his or her ability to see or hear what is occurring during the video conference. An objection to the quality of an audio conference or a video conference should be made at the time the connection is substantially impaired but must be made to the Adjudicator on the record before the remote hearing has concluded. Any objection to the quality of the audio conference or video conference made thereafter will be deemed untimely.”

No party has made an objection of this type to date.

The average length of time between the filing of a formal complaint and the hearing date in 2020 was 382 days.

In 2020, the Supreme Court issued three opinions in cases involving attorney discipline, *In re Long*, 366 Or 194, 458 P3d 688 (2020), *In re Harris*, 366 Or 475, 466 P3d 22 (2020), and *In re Skagen*, 367 Or 236, --- P3d --- (2020). The Court also approved one stipulation for discipline.

One case, *In re Long*, was remanded to the Disciplinary Board for a new trial.

#### **IV. DISCIPLINARY BOARD OVERVIEW AND DEVELOPMENTS**

The Court appoints members of the Disciplinary Board. The Disciplinary Board consists of the Adjudicator, seven regional chairpersons, and six additional members for each Board region located within the state of Oregon, except for Region 1, which has nine additional members, Region 5, which has 23 additional members, Region 4, which has 10 additional members, and Region 6, which has 11 additional members. The regional chairpersons are attorneys. Each regional roster also contains two members who are not attorneys (“public members”), except for Region 1, which contains three public members, Region 5, which contains eight public members, and Regions 4 and 6, both of which contain four public members.

With the exception of the Adjudicator, the Disciplinary Board members are all volunteers.

Disciplinary Board members other than the Adjudicator serve terms of three years and may be reappointed by the Court. Regional chairpersons serve in that capacity for terms of one year, subject to reappointment by the Court.

Trial panels consist of the Adjudicator, one additional lawyer and one public member, both of whom are from the region where the respondent lawyer practices. The

regional chairperson selects the second lawyer member and the public member who serve with the Adjudicator.

The parties have ten days in which to file challenges to the panel members. Any member may be challenged for cause. The parties each have one peremptory challenge, which may be used against either panel member other than the Adjudicator. The Adjudicator rules on the timeliness of challenges and on any challenges to other panel members. The regional chairperson rules on challenges for cause against the Adjudicator.

In 2020 there were 23 trial panels appointed. There were three peremptory challenge filed out of the 46 volunteer panel member appointments. One public member was removed from the Disciplinary Board in 2020. The Adjudicator was challenged for cause in a case that was remanded to the Disciplinary Board. The regional chairperson granted that challenge and appointed a new trial panel chairperson.

The average number of days requested by the parties regarding the length of a hearing was two.

## **V. EVALUATION OF SYSTEM OPERATION**

The Disciplinary System Review Committee report from 2015 recommended the creation of the Adjudicator position. "In making this recommendation, the Committee considered several factors: the current system takes far too long; volunteer panel members have to juggle preparation, attendance at the hearing, and drafting the opinion with their professional obligations to clients; volunteer panel members do not all have experience adjudicating disputes and often have to 'reinvent the wheel' on issues a professional adjudicator would know how to handle; and the participation of a professional adjudicator will help address the widely-held perception that the current system yields

inconsistent results and a spotty quality of opinions.” Report of the Discipline System Review Committee, November 19, 2015, at p. 15

The introduction of the Adjudicator role into the disciplinary process has successfully addressed these concerns.

All trial panel opinions have been issued on a timely basis. This continues to be appreciated by both the Bar and respondents.

Litigants continue to express approval of the fact that there is a greater level of procedural certainty. The trial hearings continue to follow the traditional trial model, but with enough flexibility to ensure that respondents are able to present their defense in a procedurally fair setting that is not artificially constrained by procedural strictures.

The system continues to be viewed favorably by Disciplinary Board Members.

## **VI. CONCLUSION**

The third year of operation under the Adjudicator model was successful. The Bar, Adjudicator and Disciplinary Board members look forward to seeking opportunities for system improvement in years to come.

Respectfully submitted,

/s/ Mark A. Turner

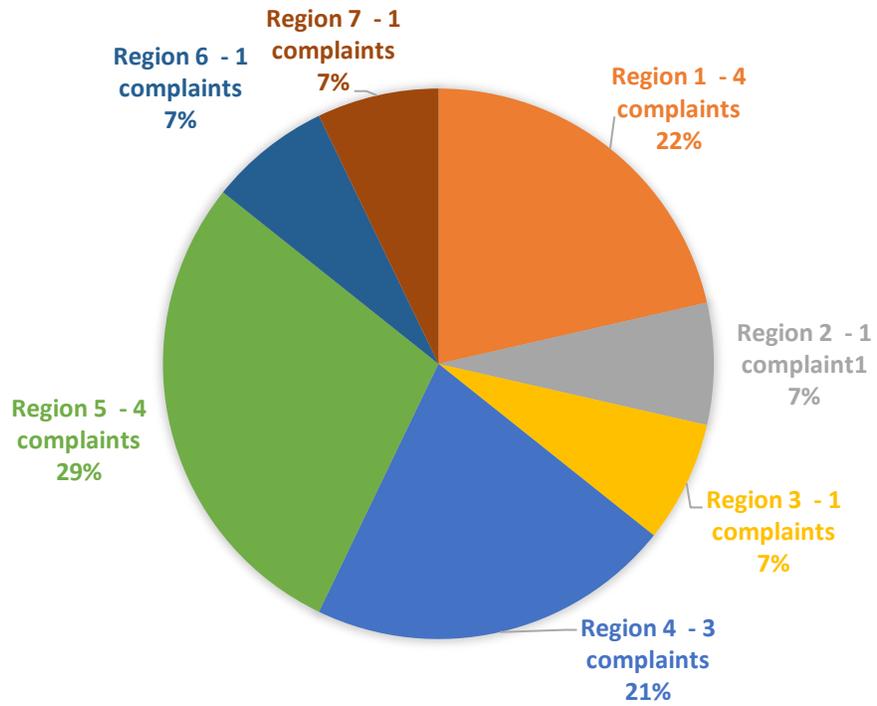
Mark A. Turner

Adjudicator

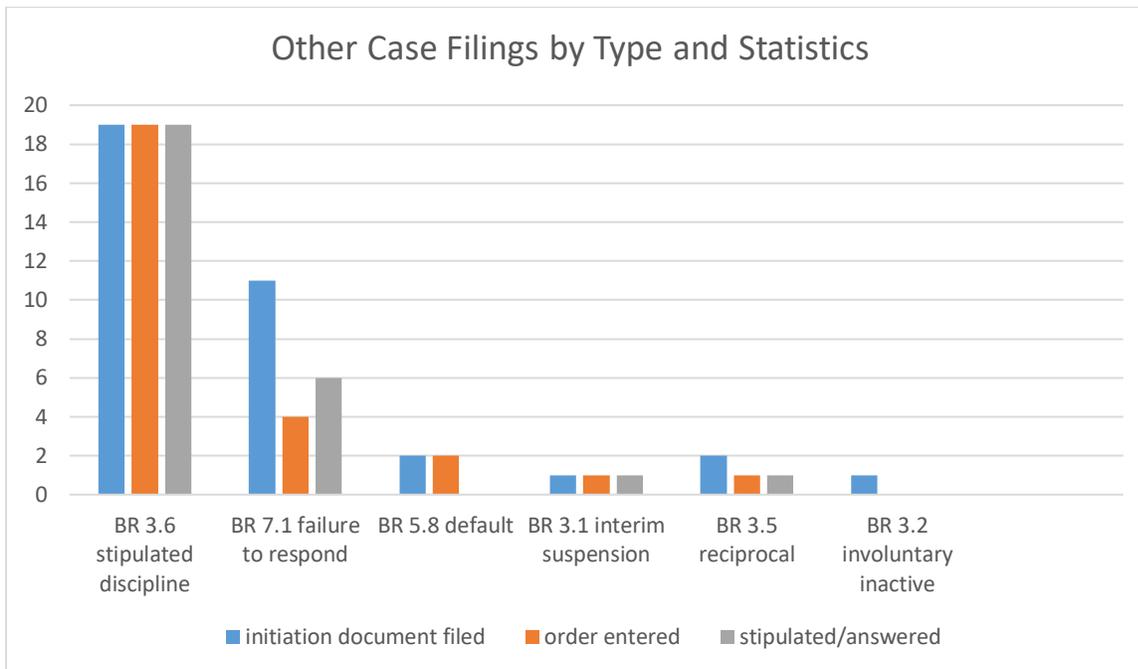
# OVERVIEW AND STATISTICS

## DISCIPLINARY BOARD FILINGS

### FORMAL COMPLAINTS FILED BY REGION (15 IN 2020)

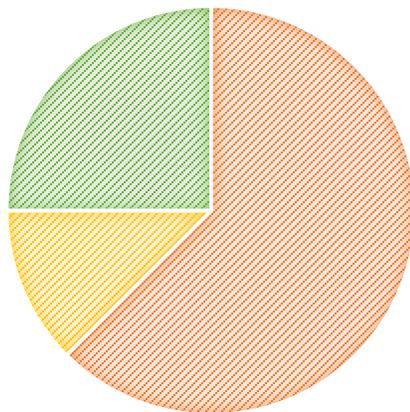


# OVERVIEW AND STATISTICS DISCIPLINARY BOARD FILINGS



## BR 4.1 FORMAL COMPLAINT CASE RESOLUTION

■ Stipulation ■ default proceeding ■ contested hearing



# OVERVIEW AND STATISTICS

## DISCIPLINARY BOARD FILINGS

